

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

3
4 W.A. DREW EDMONDSON, in his)
5 capacity as ATTORNEY GENERAL)
6 OF THE STATE OF OKLAHOMA and)
7 OKLAHOMA SECRETARY OF THE)
8 ENVIRONMENT C. MILES TOLBERT,)
9 in his capacity as the TRUSTEE)
10 FOR NATURAL RESOURCES FOR THE)
11 STATE OF OKLAHOMA,)

12 Plaintiff,)
13)

14 vs.)

15) 4:05-CV-00329-TCK-SAJ

16 TYSON FOODS, INC., et al.,)
17)

18 Defendants.)
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28 VIDEO DEPOSITION OF JOHN LITTLEFIELD,
29 produced as a witness on behalf of the Defendants in
30 the above styled and numbered cause, taken on the
31 2nd day of August, 2007, in the City of Tulsa,
32 County of Tulsa, State of Oklahoma, before me, Karla
33 E. Barrow, a Certified Shorthand Reporter, duly
34 certified under and by virtue of the laws of the
35 State of Oklahoma.

1 MR. BROWN: David Brown for Willow Brook.

2 MS. BRONSON: Vicki Bronson for Simmons.

3 VIDEOGRAPHER: Thank you. You can swear
4 the witness.

5 JOHN LITTLEFIELD,
6 being first duly sworn to tell the truth, the whole
7 truth and nothing but the truth, testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. ELROD:

11 Q Mr. Littlefield, my name is John Elrod. I
12 represent Simmons Foods in this matter, and I'm
13 going to have a few questions for you. We've not
14 met before today, have we, sir?

15 A No, sir.

16 Q And would you tell me what your name and
17 address is for the record?

18 A John L. Littlefield, 38327 South 4370 Road,
19 Adair, Oklahoma 74330.

20 Q How long have you lived in Adair?

21 A Approximately two years at that place.

22 Q All right, sir. Are you a high school
23 graduate?

24 A Yes.

25 Q What town and what year?

1 **A** I report to Dan.

2 **Q** Okay. And are there formal reporting
3 requirements, by that I mean are there standardized
4 forms that you send information upstream, do you
5 just pick up the telephone and call him, is that
6 sporadic, is it daily, or explain --

7 **A** No, it's sporadic, and I just pick up the
8 phone and call him. Then we have a weekly report
9 that we -- we are sent that we send in, and -- and
10 then we have a summary monthly report.

11 **Q** And are those reports of your activities?

12 **A** Yes, they are.

13 **Q** Any other standardized reports?

14 **A** No.

15 **Q** And are those --

16 **A** That I know of. I can't -- I think that's the
17 only -- only ones.

18 **Q** Are the weekly and monthly reports on forms?

19 **A** Yes, they are.

20 **Q** All right. Let's return to your duties. You
21 told me you perform an inspection once a year. What
22 do you do when you perform an inspection?

23 **A** Well, I get the name and address and update
24 that information on the -- on the grower. I ask to
25 see his current restoration certificate. I make

1 sure that that figure that he's registered for and
2 the number of birds is -- is what I put on my
3 inspection sheet. I ask him for his current soil
4 and litter test analysis, and I -- I look at those
5 and I put that current soil and litter analysis date
6 on the inspection sheet. It asks me if they have an
7 animal waste management plan, and I indicate they do
8 or don't.

9 Q Do you ask -- ask to actually see it?

10 A Yes, I do look at them. I actually look at
11 them. And so there's questions about catastrophic
12 loss, have you had one this past year.

13 Q Why do you ask that question?

14 A Well, we need to know if they've had any more
15 death.

16 Q Are you talking about animal loss?

17 A Animal loss.

18 Q Okay.

19 A Than -- than a normal mortality that they go
20 through, because there's special ways that they have
21 to handle a catastrophic loss.

22 Q In terms of bird disposal, you mean?

23 A Yes, bird disposal.

24 Q Do you see that very often, catastrophic loss?

25 A Well, not very often, but you see it in the

1 summer a lot. We see it sometimes when the
2 computers go down, fans go down occasionally. And
3 then in the past, we've had some disease outbreaks
4 that caused it.

5 Q What kind of disease; LT?

6 A LT primarily, yes, sir.

7 Q Okay. Are these surprise inspections?

8 A Yes, they are in most cases, yes. Some cases
9 no, because they're working and I -- I've been there
10 since '98 and I know just about when I can catch
11 them where they're available or whether they're not,
12 and who keeps the records, if it's the lady or the
13 man, and where the records are.

14 Q Do you get to know these people pretty well?

15 A Yes, sir, I do.

16 Q And for the most part, are they cooperative
17 with you?

18 A Yes, sir, they are.

19 Q Courteous?

20 A Yes, sir.

21 Q Have you had any problems with any hostility
22 at any time ever?

23 A Starting out, you know, it was a change, and
24 farmers are pretty conservative and independent
25 people.

1 Q Yes, sir.

2 A And I felt like my job, the first year or so,
3 was PR work, kind of getting to know them a little
4 bit and letting them know me. And eastern Oklahoma
5 is not just like anywhere, and so I think it's been
6 to my advantage and the State's advantage for the
7 job that I do.

8 Q You mean the attitude that you bring to the
9 job?

10 A Yes, I think so, and -- and what I need to
11 know, they feel more free to give me the
12 information. If I -- my -- another way of
13 describing it, you know, of being someone that comes
14 and regulates. You can come with a gun on your
15 side, you know, and they'll give you what you want,
16 but I think you can go and give them a handshake and
17 they'll give you what you want, and I kind of
18 operate from that standpoint.

19 Q Any bad actors out there?

20 A You know, not many now, no. I can't -- I
21 really don't have one.

22 Q Okay. Now, I get the impression that in terms
23 of getting a plan written, that's the responsibility
24 of the grower dealing directly with NRCS?

25 A That's true.

1 Q Okay. And your sole role in that is to knock
2 on the door and find out if they've got a plan and
3 ask to see it; is that true?

4 A Yes, and I do that at the time that I do the
5 inspections, that's some of the material that they
6 furnish me when I sit down to do their inspection.

7 Q Okay. What else do you do on the inspections
8 that we haven't talked about yet?

9 A I -- I check their education certificates to
10 make sure that they're up to date on their education
11 certificates. I get information in regards to where
12 the litter has been gone, where it's gone to, if
13 it's been sold or given away to somebody or place,
14 if they've spread it on their land, the fields that
15 they spread on, and I get the amount of tonnage that
16 they have cleaned out, whether they have cleaned out
17 or caked out their buildings or have a total clean
18 out. I get that in tonnage. I get information
19 about whether they have stored it. A lot of them
20 now have storage buildings and they will store it in
21 there, so I get that information, get them to sign
22 it, that's about it, I guess.

23 Q Have you caught anybody in a lie in the almost
24 10 years now?

25 A Yeah, I would have to say I have. I don't

1 impression that a lot of them it's their full-time
2 job?

3 **A** They usually have other things that they do,
4 the ones I know.

5 **Q** You also testified that you participate in
6 educational classes. Tell me about that.

7 **A** Well, the grower is responsible for getting an
8 initial nine hours when he first signs up, and
9 within the first year he's required by law to get
10 initial nine hours of education, and those are done
11 by the OSU director in different counties, put those
12 on. Then they are required, after they have the
13 initial nine hours, to have a three hour update
14 continuous education class every year. Because of
15 changing of our forms and sometimes our way of doing
16 business with the Department of Ag and sometimes,
17 most of the time because they don't understand and
18 won't read some of the stuff, I have gone and given
19 some classes to growers and applicators on the three
20 hour continuous education all the way from Broken
21 Bow to Afton at different locations. And it was
22 primarily on helping them to understand how to
23 report their litter information, how to get their --
24 it was -- it was in regards to the rules and
25 regulations is what it really was.

1 Q Okay.

2 A And I've done that for the last three years or
3 four years, I guess.

4 Q Tell me what's taught. Tell me what's taught
5 in the initial nine hour program and what's taught
6 in the three hour annual continuing education
7 course.

8 A Well, in the nine hour, and I don't have it
9 all in my mind, but in the nine hour class, they --
10 initially they talk about the rules and regulations,
11 and that will be a combination of probably
12 approximately three hours, and then they'll talk
13 about the animal waste management plan, how to use
14 it, what it's for, you're supposed to get it, then
15 they'll talk about application rates, about, you
16 know, the proper way of spreading litter and how you
17 can spread it. They'll have in that --

18 Q Let me stop you just for a second.

19 A Yes, sir.

20 Q In Oklahoma, the amount that can be applied
21 under an animal waste management program is not
22 limited to the agronomic uptake rate of a particular
23 plant, is it?

24 A No, it's not right now, to my knowledge, it's
25 not.

1 Q All right. And forgive me for interrupting.
2 When thoughts go into my brain, I have to say them
3 immediately or they'll be gone. Go ahead, please.

4 A I forgot where I was.

5 Q You were talking about what's taught in the
6 nine hour program --

7 A Oh.

8 Q -- and what's taught in the three hour
9 program.

10 A Included in some of the application
11 information that they put forth, they will explain
12 how to calibrate a truck, calibrate the rate of
13 litter that -- that will come from -- spread on the
14 land. That's primarily it for the nine hours, you
15 know. It takes nine hours to get all that through.

16 Q Is there a Power Point presentation that's
17 used or slide show or something like --

18 A Yes, they have some slides to show them at the
19 same time. They also do a pre-test and then a
20 post-test, you know. I don't think -- we don't do
21 any grading on them, but they fill out and ask
22 questions and they answer them, and then after they
23 have seen the slide and the presentation, well,
24 then, they -- and they do that -- there's actually
25 nine different subjects, but some of the subjects is

1 related -- like to the rules and regulations is
2 related, and so they have nine little tests that
3 they will do, and then after they see the
4 presentation, they'll do another one.

5 Q If I --

6 A Hopefully they learned something.

7 Q If I wanted to obtain a copy of the slide show
8 or the Power Point presentation, who would I get
9 that from? Who presents it, who's got it?

10 A OSU.

11 Q Oklahoma State University?

12 A Oklahoma State University.

13 Q Is there extension agents or whom?

14 A Yes, I guess the extension agent, I don't know
15 for sure, maybe over at Stillwater.

16 Q Like can you give me the name of a person in
17 one of the particular counties that would have this
18 thing that I could go get if I wanted to?

19 A Well, I can give you a name of the one that is
20 in charge, I think right now, and that is Dr. Josh
21 Payne.

22 Q P-A-Y-N-E?

23 A Yes, sir.

24 Q At Stillwater?

25 A I think his office is in Muskogee, but yes,

1 he's --

2 Q Okay.

3 A -- at Stillwater.

4 Q All right. What about the three hour course?

5 A The three hour course is a continuation
6 education that they're required to get once a year,
7 after they have received the nine hours, and it
8 consists of a lot of different things. It may be
9 about bugs in their houses, it may be about rodents
10 in their houses, it may be about controlling weeds,
11 you might -- application rates, riparian areas, so
12 there's a lot of different subject matter, and that
13 there is determined by the educator, which in this
14 case right now, the one that's in charge is Dr.
15 Payne.

16 Q Let's hypothetically presume that there are no
17 company -- there were no company managed registered
18 poultry operations in your area. Just set that
19 aside for a moment. If -- if that were true, would
20 it also be true that none -- no representatives of
21 any of the integrated poultry companies show up for
22 these educational meetings or are asked to? Do you
23 understand that?

24 A Yeah, explain that. Do that again.

25 Q Let me try it this way. These educational

1 programs and educational requirements --

2 **A** Yes.

3 **Q** -- are for the growers?

4 **A** That's right.

5 **Q** So if there were no company managed farms that
6 were also growers, would it be true that there would
7 be no company representatives either asked to or who
8 would show up for these educational meetings?

9 MR. NANCE: Object to the form. You can go
10 ahead and answer.

11 **Q** (By Mr. Elrod) And then we'll talk about the
12 company managed farms in a second.

13 **A** Am I supposed to answer now?

14 **Q** Yeah, go ahead.

15 **A** Anyone can come to these meetings.

16 **Q** Sure. But they don't --

17 **A** But to my knowledge, to my knowledge --

18 **Q** Yeah.

19 **A** -- the ones that do not -- that are not
20 registered with the Oklahoma Department of
21 Agriculture as a poultry grower or an applicator,
22 commercial or private, don't get an invite. I
23 mean --

24 **Q** Sure.

25 **A** -- they don't get any information to come to

1 these --

2 Q Okay.

3 A -- educational classes. There is some company
4 men that has attend --

5 Q Let me --

6 A -- the education classes.

7 Q Let me ask you about that. How many company
8 managed, those are my words, company managed farm
9 operations are there in your area?

10 A Simmons.

11 Q Okay.

12 A Has some, and they have a gentleman and
13 gentlemens that comes to the education classes --

14 Q Okay. Anybody else?

15 A -- regularly. No, sir, I don't think so, not
16 in my area.

17 Q Okay. And do you know how many Simmons
18 company managed farms there are currently in your
19 area?

20 A There were 19 -- I'm not sure now because they
21 have sold some of them.

22 Q Uh-huh.

23 A And I think it's like 13, but that's an
24 approximate figure, I don't know for sure.

25 Q Do you have any Hmong growers in your area,

1 Q (By Mr. Elrod) This is going to happen.

2 A Ask that again.

3 Q Do you think that based on your last nine
4 years of experience in the northeast Oklahoma, that
5 most of the growers are taking a responsible
6 approach towards litter management?

7 MR. NANCE: I object to the form of the
8 question. You can answer it, John.

9 A I -- excuse me, ma'am. I think -- I think so.
10 I think more so now than they were early on, but
11 yes, I think so.

12 Q (By Mr. Elrod) Do you know of any growers in
13 your area who you believe have a malicious intent to
14 harm the waters of the state of Oklahoma?

15 A No, sir, I do not.

16 Q Okay. I've got a message that we need to take
17 a break, so let's take five, 10 minutes.

18 A All right.

19 VIDEOGRAPHER: We are now off the record.
20 The time is 10:22 a.m.

21 (Following a brief recess at 10:19 a.m.,
22 proceedings continued on the record at 10:31 a.m.)

23 VIDEOGRAPHER: We are back on the record.
24 The time is 10:35 a.m.

25 Q (By Mr. Elrod) Let me hand you what I've

1 farms.

2 Q (By Mr. Elrod) And will you agree with me
3 that the location of the application of chicken
4 litter, and so long as you are complying with your
5 animal waste management plan, the rate of
6 application of chicken litter are decisions that are
7 made by either commercial applicators or the growers
8 themselves and not by other companies?

9 A I think that's true.

10 Q Okay. Are you familiar with the cooperative
11 agreement between the Department of Agriculture and
12 the Oklahoma Attorney General's Office?

13 A No, I'm not acquainted with any.

14 Q You just saved yourself 15 minutes.

15 A Good.

16 Q Do you agree with Secretary Peach that the
17 Oklahoma Department of Agriculture has no concern
18 about arsenic runoff from chicken litter?

19 A Well, I don't know what Commissioner Peach has
20 said.

21 Q Well, let me represent to you that on page 56
22 of the deposition he gave last year in another case,
23 that that was his testimony. Have you ever heard
24 any concern voiced outside of this lawsuit about
25 arsenic in chicken litter being run off into the